



THE UNITED STATES ATTORNEY'S OFFICE
SOUTHERN DISTRICT *of* NEW YORK

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Justice News

U.S. Attorney Preet Bharara Testifies At The Public Hearing Of The Moreland Commission To Investigate Public Corruption

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Chairmen Fitzpatrick, Rice, and Williams; distinguished members of the Moreland Commission; U.S. Attorney Lynch; District Attorney Vance; and members of the public, it is a privilege to be here today.

I have never testified in a forum like this before, but when the Commission reached out to me, I leapt at the chance because you are engaged in an effort that is dear to my heart not just as a prosecutor but as a New Yorker.

As I have made clear to the Commission, I pledge the cooperation and assistance of my office with the Commission's vitally important work.

Fighting public corruption has been a top priority for my office for a long while, as it has been for my friends Loretta Lynch and Cy Vance.

The diversity of the officials caught up in our probes reflects not only the level of our commitment but also the depth of the problem in our state. Public corruption, based on all the evidence, appears rampant. And the ranks of those convicted in office have swelled to absolutely unacceptable levels.

We have had to prosecute State Senators as well as State Assemblymen; elected officials as well as party leaders; city council members as well as town mayors; Democrats as well as Republicans.

In an age often decried for increasingly bitter partisanship, we can say that public corruption in New York is truly a bipartisan affair.

Sometimes we have used exclusively federal statutes, but often we have relied on the Travel Act, which requires us to prove a violation of existing state law as a predicate.

Largely, our cases speak for themselves. And a selected summary of those prosecutions is attached as an addendum to my formal testimony and submitted for the record.

In all our cases, we have dedicated ourselves to achieving accountability in every aggressive way possible, by using every legitimate tool available. I want to report briefly on one development in that regard, as it potentially raises an issue for the Commission's consideration.

Our primary mission is to address and to undo injustice – and, in the public corruption context, a galling injustice that sticks in the craw of every thinking New Yorker is the almost inviolable right of even the most corrupt elected official – even after being convicted by a jury and jailed by a judge – to draw a publicly-funded pension until his dying day.

That error of state law, partially fixed a couple of years ago, must succumb to common sense.

The common-sense principle is a simple one: Convicted politicians should not grow old comfortably cushioned by a pension paid for by the very people they betrayed in office.

So, my office has adopted a new set of policies. First, going forward, we will seek appropriate fines that take into account the money a corrupt official might derive from a publicly-funded pension so that the punishment fits the crime and so that we can take the profit out of that crime.

Second, for those defendants previously convicted and who have failed to satisfy the financial obligations imposed at sentencing, we will consider federal civil forfeiture actions against their pensions to satisfy criminal judgments.

And finally, in pending and future cases, to the extent any public official has a pension interest that accrued while engaging in criminal conduct, we will use federal forfeiture law to claw back an appropriate dollar amount commensurate with that pension where appropriate.

In that vein, we have today filed bills of particulars in two pending public corruption cases – United States v. Malcolm Smith, et al. and United States v. Eric Stevenson, et al. – giving notice of our intent to go after the pensions of elected officials convicted of corruption charges.

If there is a way for state law to be further modified to accomplish this end with respect to politicians elected prior to 2011, the Commission should consider it because I think New Yorkers would welcome it.

In the meantime, we will pursue the strategy I have just outlined.

As for other issues for the Commission to consider, given the collective experience and expertise of its members, it seems a bit presumptuous for someone like me to offer any advice or counsel.

But in the limited time I have this evening, let me just make three quick observations based on some of our experiences in the U.S. Attorney's Office for the Southern District of New York.

First, when District Attorney Rice last month said that the Commission would “follow the money,” New Yorkers had reason to cheer. But it is hard, of course, to do that when the money trails are purposely hidden. When every state or local official is able to lawfully moonlight as a lawyer or accountant and may lawfully withhold deep details of that work, prosecutors face substantial challenges.

That's why God made the subpoena.

And it is heartening to see its appropriately aggressive use to track the flow of money in politics.

Second, public hearings are important and policy proposals are important too. But so are hard-nosed investigations and prosecutions, which I hope will be a primary, rather than tertiary, focus of the Commission. Nothing shines a light brighter or focuses the public's anger and attention better than the actual arrest and conviction of a corrupt politician.

It was a wave of prosecutions that reportedly spurred this Commission's creation in the first place. And worthy prosecutions, I believe, will ratify the importance of your ongoing work and rally support for your ultimate recommendations.

As the Commission does its deep dive, in my office we stand ready to prosecute any appropriate cases you may refer – especially given our track record of success, our access to resources, our tough penalty provisions, and our reputation for nonpartisanship.

Third, sometimes when dealing with a big crime problem, it is important not to overlook the small things. The overlooking of seemingly small things can, over time, breed a dangerous disrespect for the rule of law.

As with every category of criminal conduct, too often it is the accumulation of small and seemingly minor violations that leads to widespread lawlessness.

That is the central insight of the “broken windows” theory, famously posited by James Q. Wilson.

And there seems to be a bit of that going on with our campaign finance laws in New York. Take the case of campaign committee filings. State election law requires every registered political committee that receives or spends any money in connection with an election to file a sworn statement with the New York State Board of Elections.

These filings require the most basic information about contributions received and expenditures incurred by the committee. While a relatively basic requirement designed to ensure some level of transparency in State elections, this past year, more than a hundred campaign committees didn't even bother to file the statement.

And what was the consequence? A nominal fine, which, in many cases, may be impossible to enforce because the committees often disband post-election.

Respectfully, the Commission might do well to begin by focusing on the broken windows all around.

Ultimately, the members of this Commission have an absolutely daunting mission – it is your challenge, amidst high hopes, to hold public officials to account, to expose obscure corners of graft and greed, and to restore faith in honest government.

That is a tall order.

At the end of the day, in all things, toughness and independence pay off.

When people understand that no one is immune from appropriate investigation or inquiry – whether in the majority or the minority, whether in the upper chamber or the lower, whether in the legislative or the executive branch – then there will be a measure of respect and fear, and perhaps, deterrence. That is true for a prosecutor’s office, and it is true also for a Moreland Commission.

Of course, as I have said before, public corruption in New York is more than a prosecutor’s problem. No one prosecutor can fix it. No one commission can fix it either.

The public and the press have a role to play also – and this Commission, with a bigger bully pulpit than any individual prosecutor, can encourage public engagement.

To repeat a longstanding lament, investigative journalists have become a dying breed, although there are still a few extraordinary practitioners, some of whom are here tonight. With each press outlet that closes or downsizes, opportunities to ferret out fraud and waste and abuse are lost.

And that is too bad because, as Edward R. Murrow once observed, “A nation of sheep will beget a government of wolves.”

But maybe the thinning ranks of investigative journalists will be fortified:

Maybe Politico’s purchase of Capital New York and its planned infusion of staff and resources will mean more Albany muckraking.

Maybe Jeff Bezos’s purchase of the Washington Post and his reported interest in rejuvenating a storied history of eye-popping investigations will prove contagious.

And maybe fresh news outlets like BuzzFeed whose editors are said to be bent on doubling down on political investigations will provide grist for Commissions like this one.

We shall see.

Meanwhile, in cooperation and coordination with the important work of this Commission, we will continue to prosecute those who perpetuate a show-me-the-money culture in Albany.

Thank you.

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